as a whole, should lead to a reappraisal of his significance within the New Zealand literary tradition. The Baxter that emerges from this study was far more deeply imbued with the European tradition as a living imaginative reality right up until his death, rather than someone, as is commonly supposed, who 'saw the light' by discarding the trappings of that tradition in order to write the *Jerusalem Sonnets*, which are taken as an entry into proper authenticity.

The Snake-Haired Muse also suggests, to me, that once Baxter's place in New Zealand poetry has been properly established, that, in turn, is likely to contribute to a still larger undertaking: the ongoing task of revising the *mythos* of New Zealand's cultural evolution established by the 'cultural nationalists' of the 1930s. It is becoming increasingly apparent that this *mythos* – of an abrupt new departure into genuine New Zealandness when poets and painters threw off 'colonial' influences from Europe in order to express a reality that was 'local and special' – is unsatisfactory as an explanation of this country's cultural history. Despite a growing number of scholarly cautions, that *mythos* is still very much with us: it receives an emphatic re-articulation in Francis Pound's *The Invention of New Zealand: Art and National Identity 1930-1970* (2009), and provides the framework for the overview offered in the new account of this country's cinematic history published by Te Papa, *New Zealand Film: An Illustrated History* (2011). The evidence provided by Baxter's practice as revealed in *The Snake-Haired Muse*, a landmark book, should deepen one's reservations about this *mythos*: after all, what is the use of an explanatory myth that is not able to account for the country's most famous poet?

A Simple Nullity? The Wi Parata *Case in New Zealand Law and History*

by David V. Williams. Auckland University Press, Auckland, 2011
viii, 287pp. ISBN: 9781869404840

Reviewed by Alex Frame

Professor David Williams has a well-established place among the leading contributors to 'Treaty jurisprudence' – as legal thinking on and around the Treaty of Waitangi of 1840 has come to be called. The early period of that movement as it gained momentum in the 1970s and 1980s was characterized by what I have called the 'pathological view'[1] of race relations in New Zealand, which pictured an unremitting oppression of helpless Maori 'victims' by greedy European colonizers with a cunning master plan.

More recently, however, a more nuanced and complex view has begun to emerge, in which motives and strategies on all sides are shown to be more

diverse and pragmatic than allowed by the crude 'goodies and baddies' model. Paul McHugh and Mark Hickford have begun to show that, instead of a 'master plan' of colonial domination, there was an experimental and stumbling series of sometimes contradictory legal theories for colonization, and that these could only be understood by careful excavation in their historical context. Richard Boast has recently demonstrated in a prize-winning book that Maori land sales to the Crown could not be fitted into a simple oppressor/victim model, but required a more complex approach which credited Maori rationality, vision, and agency. The Ngati Maniapoto legal historian, Paul Meredith, and the Maori film-maker, the late Barry Barclay have, in their own ways, insisted on an active and calculated Maori response to the incoming European tide. David Williams' new book, *A Simple Nullity? The* Wi Parata *Case in New Zealand Law and History*, should I think be seen as a valuable further step towards this more nuanced and complex view of the course of relations between Maori and Pakeha and their legal manifestations, and can only consolidate the reputation of its author.

The new approach would be attributed by some exponents to the insight of the expatriate New Zealand thinker, Professor J.G.A. Pocock, who insisted as early as 1957 in his seminal work *The Ancient Constitution and the Feudal Law*[2] that the concepts and actions of ancient times can only be made intelligible if the world in which they occurred is 'resurrected' and described in detail. Indeed, Pocock reminds us that the modern historical method finds its origins in the work of legal scholars in the French universities in the sixteenth century to reconstruct Roman social life for the purpose of arriving at more faithful interpretations of Roman legal texts.

The work of the late Frank Kermode on hermeneutics might also have offered an answer for David Williams' question as to how the *Parata* case has come to stand only for the Court's side-comment on the Treaty of Waitangi that: 'so far . . . as that instrument purported to cede the sovereignty – a matter with which we are not here directly concerned – it must be regarded as a simple nullity'.

Professor Williams unfolds for us other dimensions of the judgment which might have entitled it to more favourable consideration by posterity. But as Professor Kermode has pointed out:

> sometimes it appears that the history of interpretation may be thought of as a history of exclusions, which enable us to seize upon this issue rather then on some other as central, and choose from the remaining mass only what seems most compliant.[3]

The French ethnologist, Michel Panoff, would go even further towards recognizing Polynesian steadfastness in the face of European incursions. Writing in 1989, Panoff proposed that Western civilization did not smash

into some delicate piece of Tahitian clockwork, with the supposed 'fatal impact', but rather found a living organism ready to regenerate and adapt to new and unforeseen circumstances. Panoff states: 'The whole subsequent history shows a tireless perseverance in the efforts of the islanders to maintain, and where circumstances permitted, to increase their freedom of action.'[4] Panoff takes the point to this extremity: '. . . as for the effect of the colonial conquest, it will be seen throughout this account, the matter is so complex that one will forever ask who was the conqueror and who the colonised'.

David Williams is right to put the *Parata* judgment's excursion on the Treaty of Waitangi in better perspective for us. However, there is one legal aspect which the treatment seems to me to overlook. It concerns the approach of the Court to its proper function when faced with deciding whether an entity qualifies as a 'state' for the purposes of treaty making.

The 1877 Court in *Parata* viewed the question of the existence or non-existence of Maori 'sovereignty' and 'statehood' as if it involved some retrospective socio-political investigation into such matters as the presence of central control, a homogeneous legal system, fixed boundaries, 'civilization', and so on. In fact, the elusiveness of such concepts, and their tendency towards eurocentric bias, has caused common law doctrine to prefer a more pragmatic approach centred on executive *recognition* by the State in whose courts the question is asked. For example, in *Hunt v Gordon* NZLR 2 CA 160 in 1884, the question was whether Samoa was a 'foreign State' within the meaning of the *Naturalisation Act* 1870, so that the plaintiff could renounce his allegiance to the Crown of Great Britain and become a Samoan subject. Significantly, it was Justice Richmond in the New Zealand Supreme Court, who said:

> I am asked to decide, on the evidence, or leave it to the jury to decide, that *de facto* Samoa is civilized. Whether the evidence could possibly justify any such conclusion I need not stop to inquire; it is enough to say that the Crown does not recognise Samoa as civilized, but, on the contrary, treats the Navigator Group as 'not within the jurisdiction of any civilized power'. The Crown represents the nation in its foreign relations, and *upon the subject of what is or what is not to be recognised as a foreign State or as a civilized Power the Municipal Courts of the Empire must take their direction from the Crown. Saving the Imperial Legislature, the Crown, through its recognised diplomatic organs, is the highest, and indeed the only, authority upon this subject*. (emphasis added)[5]

Professor Williams' discovery (as I think we may call his well-assembled argument) that Justice Richmond was very likely the primary author of

the *Parata* judgment makes the contradiction between the 1877 and 1884 judgments the more striking. However interesting it may be from an historical point of view to investigate whether the social and political features of a community do or do not support an act of recognition by the Executive, it is *the act of recognition itself* which determines the legal status of the recognized State in the Courts of the recognizing State.

A few gripes. I am unable to read the *Education Ordinance* 1847 quoted at page 72 of the text as 'a requirement that instruction to Maori had to be conducted in the English language'. 'Instruction in the English language' appears to be only one of the matters on which instruction could be offered. Perhaps one source neglected, which could have been of particular value in relation to C.W. Richmond, are the *Richmond-Atkinson Papers*.[6] More seriously, the long chapter nine titled 'Revisionist legal history' appears to the present reviewer to be a 'chapter too far'. Its attempt to summarize and integrate the jurisprudence since the 1877 decision seems too ambitious and leaves at least this reviewer, not wholly unacquainted with the subject matter, floundering. This book was never going to be light reading but the diligent lector who has faithfully followed Professor Williams through his interesting, informative, and shrewd unpacking of the *Parata* story, had perhaps earned a less demanding finale.

1 Alex Frame, *Grey and Iwikau: A Journey into Custom*, Wellington, 2002, p.11.
2 J.G.A. Pocock, *The Ancient Constitution and the Feudal Law*, first published 1957, 'Reissue with a Retrospect', Cambridge (UK) and New York, 1987.
3 Frank Kermode, *The Genesis of Secrecy; On the Interpretation of Narrative*, Cambridge (Mass.), 1979, p.20.
4 Michel Panoff, *Tahiti Métisse*, Paris, 1989, p.27, transl. by present reviewer.
5 *Hunt v Gordon*, NZLR 2 CA 160, per Richmond J. at pp.184-5.
6 *The Richmond Atkinson Papers*, Guy H. Scholefield, ed., Wellington, 1960. For Richmond's view on the 'Barton' affair explored in the book, see Volume II at pp.459 and 463.

Letters from Gallipoli: New Zealand Soldiers Write Home

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Reviewed by Kate Hunter

In 1928 Australian official war historian Charles Bean urged the committee establishing the Australian War Memorial to collect personal writings of soldiers because they would 'supplement the frigid records of the [official unit] diaries with the warm personal narratives of the men'.[1] It was not, however until Bill Gammage's ground breaking study in 1974, *The Broken Years*, that soldiers' letters and diaries were used by historians as the